

15-1262 McCRORY V. HARRIS

DECISION BELOW: 2016 WL 482052

LOWER COURT CASE NUMBER: 1:13-cv-949

QUESTION PRESENTED:

The three-judge court below held that North Carolina Congressional Districts 1 ("CD 1") and 12 ("CD 12") were unconstitutional racial gerrymanders. The court's ruling traps North Carolina between the "competing hazards of liability" of compliance with the Voting Rights Act ("VRA") and avoiding unconstitutional racial gerrymandering. As to CD 1, the court accomplished this result by presuming racial predominance from North Carolina's adherence to *Bartlett v. Strickland*, 556 U.S. 1 (2009) ("*Strickland*") and then analyzing the State's evidence as if North Carolina was a VRA Section 2 plaintiff instead of a state defending against future VRA claims. As to CD 12, the court trapped North Carolina by ignoring this Court's specific standard for proof that "race rather than politics" predominated: plaintiffs had to prove "at the least" that the legislature could have "achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional redistricting principles" yet bring about "significantly greater racial balance" than CD 12. *Easley v. Cromartie*, 532 U.S. 234 (2001) ("*Cromartie II*"). In doing so, the three-judge court relied on evidence to find racial predominance that this Court repeatedly rejected in *Cromartie II*. Judge Osteen dissented from the three-judge court's ruling on CD 12.

The questions presented are:

1. Did the court below err in presuming racial predominance from North Carolina's reasonable reliance on this Court's holding in *Strickland* that a district created to ensure that African Americans have an equal opportunity to elect their preferred candidate of choice complies with the VRA if it contains a numerical majority of African Americans?
2. Did the court below err in applying a standard of review that required the State to demonstrate its construction of CD 1 was "actually necessary" under the VRA instead of simply showing it had "good reasons" to believe the district, as created, was needed to foreclose future vote dilution claims?
3. Did the court below err in relieving plaintiffs of their burden to prove "race rather than politics" predominated with proof of an alternative plan that achieves the legislature's political goals, is comparably consistent with traditional redistricting principles, and brings about greater racial balance than the challenged districts?
4. Regardless of any other error, was the three-judge court's finding of racial gerrymandering violations based on clearly erroneous fact-finding?
5. Did the court below err in failing to dismiss plaintiffs' claims as being barred by claim preclusion or issue preclusion?
6. In the interests of judicial comity and federalism, should the Court order full briefing and oral argument to resolve the split between the court below and the North Carolina Supreme Court which reached the opposite result in a case raising identical claims?

JURISDICTION NOTED 6/27/2016